

13-3404. Sale of precursor or regulated chemicals; report; exemptions; violation; classification

A. A manufacturer, wholesaler, retailer or other person who sells, transfers or otherwise furnishes any precursor chemical or regulated chemical to any person in this state shall submit a report to the department of public safety of all of those transactions.

B. The department of public safety shall provide a common reporting form which contains at least the following information:

1. The name of the substance.
2. The proprietary name of the product, if any.
3. The quantity of the substance sold, transferred or furnished.
4. The date the substance is to be sold, transferred or furnished.
5. The name and address of the person buying or receiving the substance.
6. The name and address of the manufacturer, wholesaler, retailer or other person selling, transferring or furnishing the substance.

C. A manufacturer, wholesaler, retailer or other person who sells, transfers or otherwise furnishes a precursor chemical or regulated chemical to a person in this state, not less than twenty-one days before delivery of the substance, shall submit a report of the transaction to the department of public safety, except that the department of public safety may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the department of public safety determines that both of the following exist:

1. A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer or other person who sells, transfers or otherwise furnishes such substance and the recipient of the substance.
2. The recipient has established a record of utilization of the substance for lawful purposes.

D. A manufacturer, wholesaler, retailer or other person who receives from a source outside of this state any precursor chemical or regulated chemical shall submit a report of such transaction to the department of public safety in accordance with rules adopted by that department.

E. Subsections A, B, C and D do not apply to any of the following:

1. The sale, transfer or furnishing of ordinary ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine products.
2. The sale for personal use of ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine products totaling four packages or less.
3. The sale, transfer or furnishing of a precursor chemical or regulated chemical by a wholesaler or manufacturer if both parties to the transaction possess a valid and current permit issued pursuant to title 32, chapter 18 and a valid and current precursor list I chemical distributor registration or controlled substance distributor registration issued pursuant to the federal act.

F. Any manufacturer, wholesaler, retailer or other person who sells, transfers or otherwise furnishes any precursor chemical or regulated chemical to any person in this state in a suspicious transaction shall report the transaction in writing to the department of public safety.

G. A person who is regulated by the provisions of this chapter and who discovers the theft, disappearance or other loss of any precursor chemical II or regulated chemical or the excessive or unusual loss of any precursor chemical I shall report the theft or loss in writing to the department of public safety within three days after such discovery. Any difference between the quantity of any precursor chemical II or regulated chemical received and the quantity shipped and any excessive or unusual loss of any precursor chemical I shipped shall be reported in writing to the department of public safety within three days of actual knowledge of the discrepancy. A report made pursuant to this subsection shall also include the name of the common carrier or person who transports the substance and the date of shipment of the substance.

H. Any manufacturer, wholesaler, retailer or other person who sells, transfers or otherwise furnishes any precursor chemical or regulated chemical to any person in this state shall maintain records as described in subsection B relating to all such transactions for not less than two years, except that this requirement does not apply to sales for personal use of ordinary ephedrine, pseudoephedrine, (-)-norpseudoephedrine or phenylpropanolamine products by a permitted retailer. These records shall be open for inspection and copying by peace officers in the performance of their duties. A peace officer shall not divulge pricing information obtained pursuant to this subsection except in connection with a prosecution, investigation, judicial proceeding or administrative proceeding or in response to a judicial order.

I. This section does not apply to any of the following transactions:

1. The sale, transfer or furnishing to or by any practitioner or any pharmacist acting pursuant to a prescription.
2. The sale, transfer or furnishing to or by a hospital, long-term health care provider or managed health care provider or any other licensed or permitted health care provider that administers or dispenses precursor chemical I medication under the supervision of a practitioner.
3. The sale, transfer or furnishing of iodine either:
  - (a) In an amount of two ounces or less by weight.
  - (b) To a licensed or permitted wholesaler, health care facility, pharmacy or practitioner.
  - (c) As a tincture of iodine or topical solution of iodine.
4. The sale, transfer or furnishing of red phosphorous in an amount of less than four ounces.
5. The movement from one facility of a licensee or permittee to another facility of the same licensee or permittee without sale.
6. The sale, transfer or furnishing of dietary supplements if all of the following apply:
  - (a) The dietary supplements are not otherwise prohibited by law.
  - (b) The dietary supplements contain naturally occurring ephedrine, ephedrine alkaloids or pseudoephedrine, or their salts, isomers or salts of isomers, or a combination of these substances that both:
    - (i) Are contained in the matrix of organic material in which they naturally occur.
    - (ii) Do not exceed five per cent of the total weight of the natural product.
  - (c) The dietary supplements are manufactured and distributed for legitimate use in a manner that reduces or eliminates the likelihood of abuse.

(d) The dietary supplements are labeled in compliance with the dietary supplement health and education act of 1994 (21 United States Code section 321).

J. The department of public safety shall grant an exemption from the reporting requirements under subsection C to any person who supplies a precursor chemical or regulated chemical if the person can demonstrate to the department's satisfaction that the recipient requires the substance for a lawful purpose and that special circumstances prevent the supplier from reporting the transaction to the department twenty-one days or more before delivery.

K. The director of the department of public safety may adopt rules to carry out the provisions of this section which are not inconsistent with the statutes of this state.

L. A permitted manufacturer, wholesaler or retailer who sells, transfers or otherwise furnishes any precursor chemical or regulated chemical to any person in this state may satisfy the reporting or record keeping requirements of this section by submitting to the department of public safety either:

1. Computer readable data from which all of the required information may be derived.
2. Copies of reports that are filed pursuant to federal law and that contain all of the information required by this section.

M. This chapter does not preclude any person, including a licensee, permittee, manufacturer, wholesaler or retailer, from instituting contact with and disclosing transactions or transaction records to appropriate federal, state or local law enforcement agencies if the person has information that may be relevant to a possible violation of any criminal statute or to the evasion or attempted evasion of any reporting or record keeping requirement of this chapter.

N. Any person, including a licensee, permittee, manufacturer, wholesaler or retailer or any officer, employee or agent of any licensee, permittee, manufacturer, wholesaler or retailer, that keeps or files a record as prescribed by this section or that communicates or discloses information or records under this section is not liable to its customer, a state or local agency or any person for any loss or damage caused in whole or in part by the making, filing or governmental use of the report or any information contained in that report.

O. Notwithstanding any other law, a county, city or town shall not enact an ordinance that is more restrictive than the requirements of this section.

P. It is unlawful for a person to knowingly:

1. Fail to submit a report that is required by this section.
2. Fail to maintain a record that is required by this section.
3. Furnish false information or omit any material information in any report or record that is required by this section.
4. Cause another person to furnish false information or to omit any material information in any report or record that is required by this section.
5. Participate in any wholesale or retail transaction or series of transactions that is structured by a person with the intent to avoid the filing by any party to the transaction of any report that is required by this section.

Q. A person who violates subsection P, paragraph 3, 4 or 5 is guilty of a class 5 felony. A person who violates subsection P, paragraph 1 or 2 is guilty of a class 6 felony.